

1 Longstreth

2 **A. Yes.**

3 Q. Is that what you considered as
4 well, how much Marvel would accept in order
5 to monetarily -- in order to make that
6 asymmetrical situation symmetrical?

7 **A. I considered that, but the main**
8 **thing I was asked to consider, I think, is**
9 **the factors that would go into a business**
10 **judgment by the independent directors.**

11 Q. But in your rebuttal report,
12 responding to Mr. Fowler's analysis, in that
13 report and this report that we're asking you
14 about today, was it your attempt to find out
15 how much money Marvel would need to obtain in
16 negotiations in order to make that
17 asymmetrical situation symmetrical?

18 **A. I just expressed an order of**
19 **magnitude amount of money.**

20 Q. And is that amount of money, in
21 your view, is that an adequate amount of
22 money? 150 million dollars is your
23 conclusion; is that correct?

24 **A. In the order of magnitude of**
25 **something, that would.**

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2 Q. What does that mean "in the order
3 of magnitude"?

4 A. I have no formulaic approach to
5 this. I'm trying to look at a company with a
6 two billion dollar market cap at this time.
7 I'm trying to look at how much money is being
8 extracted by one shareholder, 553, and I'm
9 just saying in the order of magnitude, which
10 is, in other words, a very rough statement of
11 an amount of money that would suffice, if the
12 board decided, look, we're prepared to bet
13 the ranch on this thing, but we need to be
14 compensated.

15 Q. If you or a director is tasked with
16 approving a transaction in which you are
17 deciding what Marvel should receive as
18 payment for these restrictions, would you
19 deem it appropriate to seek advice from a
20 financial advisor or investment banker before
21 making your final judgment?

22 A. About the amount?

23 Q. About the amount.

24 A. Well, I said that in my first
25 report. I said that you ought to -- if

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2 you're going to sit down and negotiate, in
3 other words, if you say, I have overcome the
4 bet the ranch problem so let's talk about
5 what is enough to warrant our taking these
6 risks with the company, yeah, I think that's
7 what I said.

8 Q. And the risks that you say that
9 they would be taking, would you consult with
10 financial and legal advisors to try to
11 identify all of those potential risks that
12 Marvel would face?

13 A. As an independent director, I don't
14 think I would feel as compelled to do that
15 with respect to the business risk, because I
16 mean, I know the company better than they do,
17 and I know the business risk. I mean, any
18 extra advice is always welcome. I'm just
19 saying I don't feel quite the same way about
20 that question as I do about exploring ways of
21 compensating me.

22 Q. Let's talk about the risk.
23 You say in your exchange two that
24 there is one hundred percent of the risk is
25 being borne by Marvel?

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2 A. Yes.

3 Q. Other than the over leverage risk,
4 what other risks are imposed on Marvel as a
5 result of these provisions?

6 A. I can't imagine all the different
7 risks. All I know as a director, I'm tying
8 my hands with respect to a set of things I
9 shouldn't do, I can't do, and in ways I
10 cannot now identify completely. I know that
11 it's possible that those tying of hands could
12 come back to hurt me. That's all.

13 Q. Well, did you look at Mr. Fowler's
14 report and his analysis of what the costs in
15 terms of reduced financial flexibility would
16 be to Marvel?

17 A. I did look at it.

18 Q. And in particular, Mr. Fowler does
19 an analysis of the debt restriction?

20 MR. FRIEDMAN: What page are you
21 referring to?

22 MR. LOCKWOOD: I'm referring to
23 pages seven and eight. Actually it
24 starts the last two sentences of page
25 six and goes through page eight.

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2 A. I'm getting used to your approach,
3 and I now look at the page before the page
4 you refer me to.

5 Q. Well, I'm trying to give you a
6 fulsome analysis so you don't tell me later I
7 didn't give you enough so you can make a
8 judgment.

9 A. It's helpful.

10 Q. In fact, I'll give you a moment if
11 you like.

12 A. I have developed a rhythm about
13 this stuff.

14 Q. If you would like to read
15 paragraphs 15 through 17.

16 MR. FRIEDMAN: From the bottom of
17 6 through the middle of page 8?

18 MR. LOCKWOOD: Correct.

19 A. Do you want me to read 17 too?

20 Q. Yes.

21 A. Well, isn't the key to all of that
22 the words "at the time" in the next to last
23 sentence of 17? I mean, I don't quarrel with
24 what he is saying except I do find that
25 the -- I see no real significance to an

1 **Longstreth**

2 **incurrence test versus a maintenance test,**
3 **but putting that aside for a minute.**

4 Q. I think it would be helpful --

5 MR. FRIEDMAN: Let the witness
6 finish what he was saying.

7 MR. LOCKWOOD: There is no
8 question pending.

9 MR. FRIEDMAN: Do you want to
10 strike everything he said or let him
11 finish?

12 A. **You never asked me a question.**

13 Q. I asked you to read this and then I
14 was going to ask you a question.

15 MR. FRIEDMAN: You should finish
16 what you were saying.

17 A. **I thought there was a question,**
18 **what do I think of this.**

19 Q. That may have been my next
20 question, but I didn't get a chance to ask
21 it. If you're answering that question, go
22 ahead and finish.

23 A. **What I was saying, aside from**
24 **suggesting that maintenance and incurrence**
25 **tests are not a very big deal in this**

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2 context, what I really was saying is that at
3 the time the notes were issued, the negative
4 covenants were not biting hard on Marvel, but
5 that really isn't the analysis that I would
6 engage in as a director. I would say to
7 myself when they bite, if we get in a
8 condition where they start to bite, then
9 what? What can they do to me on the
10 downside?

11 I think the analysis, with all due
12 respect to Mr. Fowler, his analysis is very
13 upbeat, looking at the stock coverage at the
14 time and depreciating rather severely the
15 value of the covenants on the downside. I'm
16 looking at the downside and saying that they
17 were important. And so it's just two
18 different points of view about the same
19 thing.

20 Q. With respect to Mr. Fowler's
21 analysis, one of the things that you have
22 pointed out that he discusses is distinction
23 between maintenance covenants and incurrence
24 covenants. In that context, he is
25 contrasting the covenants that are found in

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2 Marvel's own credit agreements to the
3 covenants that are found in the Marvel
4 holding company indenture; is that your
5 understanding?

6 **A. Yes.**

7 Q. I take it from the materials
8 reviewed that you didn't look at any of
9 Marvel's credit agreements; is that correct?

10 **A. That's true; I think that's**
11 **correct.**

12 Q. And you are, in the course of your
13 work as a lawyer, you're someone who is
14 familiar with bank credit agreements?

15 **A. I am.**

16 Q. And in terms of Mr. Fowler's
17 analysis where he is actually relying on
18 Professor Holthausen's analysis, that the
19 Marvel credit agreement themselves had
20 greater restrictions than the holding company
21 covenants?

22 **A. Yes.**

23 Q. I know you were asked some
24 questions by Mr. Clark about this.

25 **A. Yes.**

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2 Q. Has your view changed at all since
3 the last deposition?

4 A. No.

5 Q. You didn't do any further work to
6 analyze the Marvel covenants versus the
7 Marvel holding company covenants?

8 A. I did not.

9 Q. With respect to the debt capacity
10 of Marvel, if Marvel was to live under these
11 covenants that Mr. Fowler had performed and
12 that's noted in paragraph 17 and is set forth
13 in Exhibit 4 of his report, did you try to
14 construct any similar analysis of what
15 Marvel's debt capacity would be?

16 A. No.

17 Q. Do you have any reason to dispute
18 the numbers that were derived by Mr. Fowler
19 as a result of his analysis? The hard data
20 is going to be found in Exhibit 4 to his
21 report.

22 A. I did not examine his analysis to
23 see if he was right or wrong. I have no
24 reason to believe he is wrong about that. It
25 all speaks at the time of the issuance of the

1 Longstreth

2 notes. I'm not saying it is right either. I
3 just accepted it as a statement.

4 Q. Now, I think you have several times
5 today said that one of the things that
6 concerned you is that what Marvel would do on
7 a needed financial flexibility on a downturn;
8 is that fair?

9 A. Yes.

10 Q. I also take it from your testimony
11 that one of the things that most concerned
12 you on a downturn was the company's ability
13 to access equity markets as a way?

14 A. Well, that was one of the things,
15 yes.

16 Q. And is it your understanding that
17 the terms of the notes restrict Marvel's
18 ability to access equity markets?

19 A. There were restrictions. I would
20 have to go back and review the details.
21 There are restrictions --

22 Q. I'd invite you to if you want to
23 look at Exhibit 8.

24 A. Certainly the consolidation test
25 was a de facto restriction, although it's

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2 worded in the nature of a put, but it was a
3 de facto restriction on the ability of Marvel
4 to raise capital through the sale of equity
5 to others, if that sale would result in a
6 loss of the ability to consolidate.

7 Q. Let's take a look --

8 A. But I think there are some other
9 restrictions in maybe 404 that relate to
10 preferred stock maybe.

11 Q. We'll go through those one at a
12 time then.

13 A. Okay.

14 Q. We'll start --

15 A. I have to refresh my recollection.

16 Q. I'll give you an opportunity to do
17 that.

18 If you look at Exhibit 8, which is
19 the note provisions.

20 A. 8?

21 Q. Yes, it's in that pile somewhere.

22 A. I got it.

23 Q. And I'll draw your attention to --
24 if you use the numbers of the indenture, page
25 57, which is Section 4.14.

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2 **A. 57.**

3 **Q.** The top of the page, it's A-918.

4 **MR. FRIEDMAN:** Please don't
5 interrupt the witness once he starts
6 his answer. If you want to ask a
7 follow-up question that's one thing,
8 but let him finish his answer. I
9 don't think there is a question
10 pending.

11 **MR. LOCKWOOD:** There is not.

12 **Q.** Section 4.14, this is the tax
13 deconsolidation event provision, correct?

14 **A. Yes.**

15 **Q.** We've already discussed this, but
16 this provision is in the nature of a put; is
17 that correct?

18 **A. Yes.**

19 **Q.** Do you read this provision as a ban
20 on Marvel's issuance of securities of any
21 type?

22 **A. Of any type?**

23 **Q.** Yes. Does this ban Marvel from
24 issuing securities?

25 **A. Well, it's not worded as a ban,**

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2 number one, but in a -- it is tantamount to a
3 very serious restriction on the issuance of
4 any securities that would cause a
5 deconsolidation event.

6 Q. And why is that?

7 A. Because it triggers a put. And the
8 company to which the notes are put doesn't
9 have the means of paying off the notes. And,
10 therefore, the put would lead immediately to
11 a default in the payment on the notes, which
12 would result in a foreclosure. I mean,
13 that's the likely scenario.

14 Q. Let me see if I can understand
15 this.

16 How much -- what percentage of
17 Marvel stock, to your knowledge, is pledged
18 in connection with this Marvel III offer?

19 A. I think it is 80 percent.

20 Q. 80 percent is pledged for the three
21 offerings. Do you know what percent is
22 pledged just for this offering, the last one?

23 A. I don't.

24 Q. If I told you it was less than ten
25 percent, would you have any reason to doubt

1 Longstreth

2 that?

3 You don't have any reason one way
4 or the other, you don't know?

5 **A. No, I don't.**

6 **Q.** But do you have any basis to say
7 that Marvel III at any of the times that
8 Marvel actually went out into the debt market
9 and raised money by borrowing funds, that at
10 that time, Marvel III didn't have the ability
11 to sell some or all of its stock to deal with
12 any put?

13 **A.** Is that question do I have any
14 reason to believe that Marvel, that Marvel
15 III couldn't have gone out and sold the stock
16 that it held to generate the income to pay
17 off the notes?

18 **Q.** Correct.

19 **A.** I don't know how the numbers would
20 have worked out. I don't know if they could
21 have done that. I just don't know.

22 **Q.** So you didn't do any analysis to
23 determine whether they could or couldn't do
24 that?

25 **A. No.**

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1
2 Q. If Marvel III goes out and sells
3 shares that it owns, how does that restrict
4 or transfer power from the board of directors
5 of Marvel to the noteholders?

6 A. If Marvel III goes out and sells
7 the stock that it -- the stock in Marvel?

8 Q. The Marvel stock that it owns, if
9 it sells that stock, how does that transfer
10 power from Marvel's board to the noteholders?

11 A. I didn't say it did.

12 Q. So it doesn't?

13 A. I said that the transfer of power
14 came from the negative covenants.

15 Q. So it doesn't come through this put
16 provision?

17 A. No, that's another element of it.

18 Q. Is it --

19 A. That doesn't have anything to do
20 with selling the stock. The way you put
21 that.

22 Q. The end result of this put
23 provision would be that Marvel III would be
24 forced to come up with the funds to pay the
25 put, correct?

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2 A. Right.

3 Q. And you have not done an analysis
4 as to how many noteholders would think it was
5 economically appropriate to exercise that put
6 right at any particular point in time; is
7 that correct?

8 A. I think they would exercise the put
9 right if they felt insecure. That's all. I
10 haven't done an analysis of all the different
11 possible circumstances that would make them
12 feel insecure, but by definition, I think the
13 deconsolidation event, which is the trigger
14 for the put, defines maximum insecurity for
15 them. That's why they have the put.

16 Q. Well, the put is an individual
17 noteholder's option, correct?

18 MR. FRIEDMAN: I object to the
19 form of the question.

20 Q. Each noteholder gets to make their
21 own election?

22 A. I think that's right. Each holder,
23 right.

24 Q. And it is possible based on
25 prevailing interest rates, the amount of

1 Longstreth

2 security in a particular time whether
3 Mr. Perelman, because of the amount of
4 security, would be incentivized to step up
5 and make payments, which he did during these
6 time periods?

7 There could be a lot of factors
8 whether the put was an economically good or
9 bad idea for the noteholders; is that fair?

10 A. Yes, I think there are a lot of
11 factors, but given the unique structure here
12 where the note issuer has no assets, except
13 that stock, and where the interest is due
14 quarterly, I think, anyway it is due
15 annually, and where the source of that is
16 coming from the tax payments, this
17 deconsolidation event is not to be taken
18 lightly.

19 It defines a level of insecurity
20 that I think would encourage each noteholder,
21 if it occurred, to think very seriously about
22 the need to get out.

23 Q. But did you do any economic study
24 or analysis to determine whether at any
25 particular time that Marvel board was

1 Longstreth

2 considering financing alternatives, whether
3 at that time it appeared rational for the
4 noteholders to put their notes if this put is
5 triggered by the Marvel board's conduct?

6 **A. No, I didn't.**

7 Q. And you would agree that the Marvel
8 board, if you were a board member and you
9 were considering taking certain action that
10 might trigger this put, and you sought legal
11 advice or you tried to determine what your
12 rights were as a company or as a board
13 member, that even assuming that Marvel signed
14 this contract, there is nothing in this
15 Section 4.14 that obligates Marvel directly
16 to do or not do anything; is that fair?

17 **A. That's fair.**

18 Q. Let's go to Section 4.09.

19 **A. Which one?**

20 Q. 4.04.

21 4.09, which is on page 48, or if
22 you use the top, it's A-909. And this is the
23 one that's titled "Required Stock Ownership".

24 **A. Yes.**

25 Q. In general, in reaching your

1 Longstreth

2 opinion, did you have an understanding of how
3 this particular covenant worked?

4 A. I think I did at one time. I'm not
5 going to remember without reading it.

6 Q. If you need to take a moment, go
7 ahead.

8 A. Yeah.

9 MR. FRIEDMAN: Does the exhibit
10 include the page with defined terms?

11 MR. LOCKWOOD: It may not.

12 MR. FRIEDMAN: Do you want to
13 tell us if you have a document?

14 MR. LOCKWOOD: I can tell you
15 that the company is -- the MPH is
16 Marvel Parent Holdings and MHI is
17 Marvel Holdings, Inc., which is the
18 first issuer.

19 A. The first?

20 Q. Yes.

21 A. So the company is Marvel III,
22 right?

23 Q. The company is Marvel III, and
24 Marvel, the public operating company, is
25 called Marvel?

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2 A. Right.

3 Well, I mean the A, 409A is a
4 covenant requiring the company together with
5 its downstream subsidiaries to own a majority
6 of the voting stock of Marvel. That's how I
7 see it.

8 Q. As an experienced corporate lawyer,
9 is it your view that control of a company has
10 value?

11 A. Yes.

12 Q. And from the prospective of the
13 Marvel holding companies, is that value that
14 comes from the control of Marvel, the
15 operating company, a property right that they
16 would have an incentive to maintain?

17 A. I would think so.

18 Q. If you were a director of the
19 Marvel holding companies, would you feel
20 obligated to shareholders or even to
21 creditors to take actions within obviously
22 legal bounds to maintain that controlled
23 position?

24 A. To maintain the controlled
25 position, yes, I would certainly be

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2 interested in doing so, yes. I mean, I
3 wouldn't be interested in throwing it away.
4 I think there is a fiduciary duty that the
5 majority owes to the minority, and that is
6 getting into law, which I'm not supposed to
7 talk about, I guess.

8 So you balance the property rights
9 of control against some constraints on how
10 you use that control so that you don't hurt
11 the minority.

12 Q. Well, does this Section 4.09, does
13 it require Marvel or any member of its board
14 of directors to ensure that these holding
15 companies maintain 50 percent ownership?

16 A. That the holding companies what?

17 Q. Maintain 50 percent voting control.
18 Does it pose an obligation as it is written
19 at Marvel or the directors of Marvel?

20 A. No.

21 Q. It doesn't, right?

22 A. No.

23 Q. Can you explain to me then how does
24 Section 4.09 transfer the power of the board
25 of directors of Marvel to issue equity to the

1 Longstreth
2 noteholders, as I understand your opinion to
3 state?

4 A. Well, I'm tempted just to say read
5 the deposition. Tony Clark and I spent
6 probably the better part of an hour
7 discussing my statement to that effect in the
8 last report. And I don't think I can add
9 much to what I said then, and I would rather
10 just in the interest of time refer you to
11 what we said. We talked back and forth about
12 it. I have said nothing different in this
13 report; it's the same concept. And the
14 answer would be exactly the same.

15 Q. Well, if you were on the board of
16 directors of Marvel and you're looking ahead
17 to these future crises that may arise and
18 making sure that you have flexibility to deal
19 with these future crises, such as you need to
20 issue equity for some distant crisis, do the
21 terms of Section 4.09, would they prohibit
22 you as a director from issuing stock if you
23 thought that was the right decision for
24 Marvel?

25 MR. FRIEDMAN: Objection. Asked

1 Longstreth
2 and answered last time as well as at
3 this deposition.

4 A. I think my answer is yes, and for
5 all the reasons we talked about at great
6 length. I really have nothing to add on that
7 subject.

8 Q. If you were a director of Marvel --
9 well, let me back it up.

10 If you look at Mr. Fowler's report.

11 A. Okay.

12 Q. He does an analysis of whether
13 Section 4.09, referring to the company's
14 flexibility --

15 MR. FRIEDMAN: What page are you
16 referring to?

17 MR. LOCKWOOD: Hold on a moment.

18 I'm looking at paragraph 24, it's
19 on pages 11 and 12.

20 A. Okay, I got it.

21 Q. Just let me know when you had a
22 chance to read paragraph 24.

23 A. Okay. Is there a question?

24 Q. Yes. I want to draw your
25 attention, if you go back to 29, just to tie

1 Longstreth
2 this into the exchanges, there is an exchange
3 6.

4 MR. FRIEDMAN: Go back to page
5 29.

6 MR. LOCKWOOD: Yes, page 29,
7 exchange 6.

8 Q. Where Mr. Fowler recounts an
9 exchange in which Marvel would say the
10 ownership covenant restricts Marvel and
11 MacAndrews & Forbes response would be
12 twofold, that the board does not expect to be
13 able to dilute the majority share and limited
14 stock even if the board decides to, which
15 both those issues are discussed in paragraph
16 24 of Mr. Fowler's report.

17 In your considering a hypothetical
18 negotiation between Marvel and Mr. Perelman,
19 did you take into account the fact that
20 Mr. Perelman's side would present those two
21 positions?

22 A. Yes, I did.

23 Q. And if you look at paragraph 24
24 with respect to the expectations of being
25 able to dilute the majority shareholder,

1 Longstreth

2 there is a reference by Mr. Fowler to the
3 expert report of Professor Hammermesh.

4 Do you see that?

5 **A. Yes.**

6 Q. Did you read Professor Hammermesh's
7 report?

8 **A. I did.**

9 Q. There is also a reference to
10 limiting or non-voting limiting stock to the
11 report of Professor Holthausen.

12 Do you see that?

13 **A. Yes.**

14 Q. Did you read Professor
15 Holthausen's report?

16 **A. Yes.**

17 Q. Did you read those in connection to
18 preparing your rebuttal to Mr. Fowler?

19 **A. I didn't go back and reread them.**

20 Q. So let's start with Mr. Fowler's
21 reliance on Professor Hammermesh for the
22 proposition that Marvel's directors wouldn't
23 have expected to be able to eliminate a
24 majority shareholder's control through the
25 issuance of shares.

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2 Do you disagree with that
3 viewpoint?

4 A. I don't think that this is an
5 accurate statement of what Mr. Hammermesh
6 says.

7 Q. What is it that you believe is the
8 accurate statement that Mr. Hammermesh said?

9 A. He found some case support for the
10 proposition and only the proposition that you
11 cannot -- a minority cannot issue stock
12 solely for the purpose -- expressly for the
13 purpose of taking away control.

14 But putting that aside, there are a
15 million business reasons why you would
16 justify that, and one of them might be to
17 save a company from bankruptcy.

18 Q. Have you ever been on the board of
19 directors of a company that had a controlling
20 shareholder?

21 A. Have I ever been on the board?

22 Q. Yes.

23 A. No.

24 Q. Have you ever -- I don't want to
25 get into attorney-client privilege, so I'll

1 Longstreth

2 ask a broad question.

3 A. That's all right.

4 Q. Have you ever been an advisor to a
5 company that had a controlling shareholder?

6 A. Yes, a number of times.

7 Q. And was it your view that the
8 directors had some duty to respect the
9 property right that the majority shareholder
10 had in its control position?

11 A. I don't think the issue came up in
12 my experience. I mean, one such case was the
13 MA Hannah Company controlled Consolidation
14 Coal. We represented Consolidation Coal in a
15 public offering of Consolidation Coal stock.
16 We were very mindful of MA Hannah's control,
17 but I just don't recall the issue coming up.

18 Q. Well, in your experience, did you
19 ever experience a situation where the board
20 of directors of a company decided to dilute
21 the control position of the controlling
22 shareholder without that controlling
23 shareholder's consent?

24 A. I don't recall an instance of that..

25 Q. It would be exceptional if that

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2 happened, wouldn't it?

3 A. I don't know if it would be
4 exceptional or not. I mean, you would have
5 to give me all the circumstances and then
6 depending on how urgent the need was, it
7 might be exceptional, it might not be.

8 Q. If you were just putting yourself
9 back in the role you were playing as a
10 hypothetical negotiation as an independent
11 director on this point as to whether the
12 board had a power or a duty -- let me
13 rephrase it.

14 On this point as to whether the
15 board could reasonably expect to dilute a
16 controlling shareholder, is that some issue
17 that you would expect the board to go and
18 seek an opinion of legal counsel about?

19 A. With reference to this situation
20 perhaps.

21 Q. With reference to this situation
22 and the issues being asserted by one side?

23 A. I think you would certainly want to
24 consult counsel.

25 There is an unreality about your

1 Longstreth

2 questioning here. If I were an independent
3 director and the company's survival depended
4 upon raising capital through stock, I think I
5 would say to Mr. Perelman, you want to buy
6 some more stock to maintain your control,
7 because this company is going down the tubes.
8 And if you don't want to get out of the way
9 so we can save the company by selling to
10 someone else. I mean, isn't that a rational
11 approach?

12 Q. And if you did that, would in your
13 view the terms of Section 4.09 prohibit you,
14 as written, would it prohibit you from doing
15 that?

16 A. Yes.

17 Q. Could you point me to the language
18 in Section 4.09?

19 A. No, you're getting me back into the
20 question that I said I answered fully. I
21 assume I mean what 4.09 says is that the
22 holding companies will maintain majority,
23 does it not?

24 Q. That's what it says. It says the
25 holding company shall at all times be or

1 Longstreth

2 cause --

3 A. Are you asking me how is it that
4 that would be binding on Marvel?

5 Q. No, I'm not asking if it is
6 binding. I'm assuming this provision is
7 binding on Marvel, and I'm asking if you were
8 enforcing this provision as written, what in
9 it says Marvel will or will not do anything?

10 MR. FRIEDMAN: With all due
11 respect, there is an hour back and
12 forth at the prior session of Mr.
13 Longstreth's deposition on this very
14 question.

15 A. I can't add to what I said. And I
16 said a lot.

17 MR. FRIEDMAN: Are you saying
18 that you don't think this was covered
19 at great length?

20 MR. LOCKWOOD: I think there is a
21 distinction, but if he doesn't want to
22 add to it, we'll leave it at that.

23 A. Since you raised -- if you raise
24 questions that I don't answer, I'm not sure
25 what the status of that is. I mean, you

1 **Longstreth**

2 **asked me to look at 27, and in particular,**
3 **the answers to the argument. Isn't it --**
4 **wait.**

5 Q. Page 29.

6 A. **I'm sorry, 29.**

7 Q. Well, I hadn't gotten to the second
8 one. The second one was that the company
9 could issue non-voting or limited stock that
10 the company decides to. That's the second
11 one I was getting to.

12 A. **Is there a question about that?**

13 Q. There will be. I get to ask the
14 questions.

15 A. **Yes, I know.**

16 Q. The report by Professor Holthausen
17 does an analysis of the company's ability to
18 issue non-voting or limited voting stock at
19 essentially no discount to what voting stock
20 would have obtained in the equity market. So
21 are you familiar with that analysis?

22 MR. FRIEDMAN: I'm objecting to
23 the form of the question.

24 A. **Yes.**

25 Q. Regardless of my spin, Mr. Friedman

1 Longstreth

2 is objecting to that, you have read Mr.
3 Holthausen's report on it?

4 A. Yes.

5 Q. And you attempt to analyze whether
6 Mr. Holthausen is correct about the
7 company's ability to issue non-voting or
8 limited voting stock and what the market's
9 reaction to such an offering would be?

10 A. Well, I think I did. I might have
11 to refresh my recollection about his report
12 before I could comment fully on it. But I
13 think I fundamentally disagree with what he
14 is saying that you can issue voting stock or
15 non-voting or limited voting stock and they
16 are all the same, treated the same by the
17 marketplace.

18 I represented the Ford Foundation
19 from 1961 when they held 98.6 percent of Ford
20 Motor Company stock, all non-voting, until
21 1980 when the last sale of Ford stock was
22 accomplished by the Ford Foundation. And
23 from Sidney Weinberg on, no one ever dreamed
24 that the non-voting stock that Ford held,
25 Ford Foundation had the same value as the

1 Longstreth

2 class B shares or the common. So I don't
3 know what he is talking about, but I think if
4 he has got examples, I think I could find
5 examples that could disprove what his
6 examples are trying to prove.

7 In any case, it is simply an
8 oxymoron to say that Marvel says the
9 ownership covenant restricts Marvel and the
10 answer is Marvel can always issue non-voting
11 or limited. He is making the point that the
12 restrictions limit Marvel, because he can't
13 issue voting.

14 Q. The -- well, do you understand that
15 Mr. Fowler has assumed for purposes of this
16 report that it restricts Marvel?

17 A. Do I understand that?

18 Q. Yes, that's an assumption in the
19 beginning of his report. If you look at --

20 A. Well, it doesn't appear. It is an
21 assumption in the give and take of his
22 hypothetical arm's length negotiation. I
23 mean, I have to read his response in exchange
24 6 to mean that Marvel says the covenant
25 restricts us, and he is saying no, it

1 Longstreth

2 doesn't. Maybe he didn't mean that, but
3 that's what it looked like to me.

4 Q. Well, did you understand him to
5 mean it isn't restrictive in a real world
6 sense, it has no impact on Marvel?

7 A. Well, the two points he makes
8 simply doesn't make sense to me. That's all.

9 Q. With respect to the second point,
10 and your example about the Ford Foundation,
11 why isn't that in your report?

12 MR. FRIEDMAN: I object to the
13 form of the question.

14 A. Why isn't that --

15 MR. FRIEDMAN: You asked the
16 witness a question and he gave you an
17 answer.

18 Q. I'm trying to understand, is that
19 one of the bases upon which you are -- that
20 part of the analysis that you performed in
21 deciding that Mr. Fowler's analysis was
22 inadequate or flawed was to rely on your
23 experience with the Ford Foundation?

24 MR. FRIEDMAN: I object to the
25 form of the question.

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2 A. Well, I said as a preliminary
3 matter that my opinion is based on extensive
4 experience with negotiations spanning my
5 entire career as a lawyer, fiduciary and
6 senior government official. I didn't report
7 to state what I have been doing for the last
8 40 years. It's just based on experience.

9 Q. Other than that example that you
10 gave me, have you done any other analysis
11 based on transactions you may have been
12 involved in or transactions that you have
13 looked to or any general market data to
14 determine whether low vote or non-voting
15 stock in a controlled company could be issued
16 at relatively minor discount or no discount
17 to voting stock?

18 A. I haven't done any specific
19 analysis for purposes of this exercise.

20 Q. Is that an opinion you're going to
21 offer at trial that in your judgment,
22 non-voting or limited voting stock would not
23 be an option for the board of directors to
24 deal with any future liquidity crisis?

25 A. I never said it wasn't an option.

1 Longstreth

2 I'm not saying it isn't an option. Of course
3 it's an option. I'm simply saying it's not
4 the same thing as issuing voting stock.

5 Q. Can you quantify for me what the
6 relative difference would be in terms of
7 value to Marvel of non-voting or low voting
8 stock versus voting common stock?

9 A. I cannot quantify while I'm sitting
10 here, no.

11 Q. Did you make any attempt to
12 quantify in preparing your rebuttal to
13 Mr. Fowler's report?

14 A. I mean, is the stock registered?
15 Is it freely transferable? I don't know the
16 answers to any of these questions. I'm
17 simply speaking out of experience in regard
18 to low vote and no-vote shares. And I do
19 have experience on that.

20 Maybe I better mention one other
21 thing so that it isn't a surprise at the --
22 but I served on a study group for the
23 American Stock Exchange. Well, and for the
24 New York Stock Exchange, for all the
25 exchanges in recent years. Let's see, what